

## **§211.51**

opportunity for review of Emergency orders issued under that section will be provided in accordance with section 554 of title 5 of the U.S.C.. Petitions for such review must be submitted in writing to the Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will be afforded an opportunity to submit facts, arguments and proposals for modification or withdrawal of the Emergency order. If the controversy is not resolved at the conference and a hearing is desired, the petitioner must submit a written request for a hearing within 15 days after the conference. The hearing will commence within 14 calendar days of receipt of the request and will be conducted in accordance with sections 556 and 575, title 5, U.S.C. Each petition for review shall be decided not later than 3 months after receipt.

(b) Unless stayed or modified by the Administrator, the requirements of each Emergency order shall remain in effect and be observed pending decision on a petition for review.

## **Subpart E—Miscellaneous Safety-Related Proceedings and Inquiries**

### **§211.51 Tests.**

(a) Pursuant to the Department of Transportation Act (80 Stat. 931, 49 U.S.C. 1651 *et seq.*), the Federal Railroad Safety Act of 1970 (84 Stat. 971, 45 U.S.C. 421, 431-441), or both, the Administrator may temporarily suspend compliance with a substantive rule of the Federal Railroad Administration, if:

(1) The suspension is necessary to the conduct of a Federal Railroad Administration approved test program designed to evaluate the effectiveness of new technology or operational approaches or instituted in furtherance of a present or proposed rulemaking proceeding;

(2) The suspension is limited in scope and application to such relief as may be necessary to facilitate the conduct of the test program; and

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(3) The suspension is conditioned on the observance of standards sufficient to assure safety.

(b) When required by statute, a notice is published in the FEDERAL REGISTER, an opportunity is provided for public comment, and a hearing is held in accordance with §211.25, before the FRA approved test program is implemented.

(c) When the Administrator approves suspension of compliance with any rule in connection with a test program, a description of the test program containing an explanatory statement responsive to paragraph (a) of this section is published in the FEDERAL REGISTER.

### **§211.53 Signal applications.**

Applications for approval of discontinuance or material modification of a signal system authorized by part 235 or waiver of a requirement of part 236 of this chapter must be submitted in triplicate to the Secretary, Railroad Safety Board, handled in accordance with procedures set forth in part 235 or 236, respectively, and decided not later than 9 months after receipt. When a decision is issued, the applicant and other interested parties are notified or a notice is published in the FEDERAL REGISTER.

### **§211.55 Special approvals.**

Requests for special approval pertaining to safety not otherwise provided for in this chapter, must be submitted in triplicate to the Secretary, Railroad Safety Board; specifying the action requested. These requests shall be considered by the Board and appropriate action shall be taken not later than 9 months after receipt. When a decision is issued, the requestor and other interested parties are notified or a notice is published in the FEDERAL REGISTER.

### **§211.57 Petitions for reconsideration.**

(a) Any person may petition the Administrator for reconsideration of final action taken in proceedings subject to subpart C or E of this part.

(b) The petition must specify with particularity the grounds for modification or revocation of the action in question.

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(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator specifically provides otherwise, and gives notice to interested parties or publishes notice in the FEDERAL REGISTER, the filing of a petition under this section does not stay the effectiveness of the action sought to be reconsidered.

### § 211.59 Proceedings on petitions for reconsideration.

(a) The Administrator may invite public comment or seek a response from the party at whose request the final action was taken before deciding a petition for reconsideration submitted under § 211.57.

(b) The Administrator may reaffirm, modify, or revoke the final action without further proceedings and shall issue notification of his decision to the petitioner and other interested parties or publish a notice in the FEDERAL REGISTER. Each petition for reconsideration shall be decided not later than 4 months after receipt. Petitions for reconsideration relating to the same rule may be consolidated for decision. In the event the Administrator determines to reconsider a final action, and appropriate notice is published in the FEDERAL REGISTER.

### § 211.61 Informal safety inquiries.

The Administrator may conduct informal safety inquiries to collect information on selected topics relating to railroad safety. A notice of each such inquiry will be published in the FEDERAL REGISTER outlining the area of inquiry and inviting interested persons to assist by submitting written material or participating in informal public conferences and discussions. Upon completion of the inquiry, the Administrator will review the information obtained and may, on his own motion, initiate a rulemaking proceeding under § 211.13 or take whatever other action he deems appropriate.

## Subpart F—Interim Procedures for the Review of Emergency Orders

AUTHORITY: Secs. 203 and 208(a), 84 Stat. 972, 974-975 (45 U.S.C. 432, 437(a)) and 5 U.S.C. 554-559.

SOURCE: 44 FR 13029, Mar. 9, 1979, unless otherwise noted.

### § 211.71 General.

(a) This subpart consists of interim procedures for the review of emergency orders issued under section 203 of the Federal Railroad Safety Act of 1970, supplementing § 211.47 of this part.

(b) Proceedings under this subpart are subject to the requirements of 5 U.S.C. 554-559.

(c) Notwithstanding § 211.1 of this part, as used in this subpart *Administrator* means the Federal Railroad Administrator or Deputy Administrator.

### § 211.73 Presiding officer; powers.

(a) An administrative hearing for the review of an emergency order is presided over by the Administrator or by an administrative law judge designated at the request of FRA pursuant to 5 CFR 930.213.

(b) The presiding officer may exercise the powers of the FRA to regulate the conduct of the hearing and associated proceedings for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(c) The final decision of the presiding officer shall set forth findings and conclusions based on the administrative record. That decision may set aside, modify or affirm the requirements of the emergency order under review.

(d) Except as provided in § 211.77, the decision of the presiding officer is administratively final.

### § 211.75 Evidence.

(a) The Federal Rules of Evidence for United States Courts and Magistrates shall be employed as general guidelines for the introduction of evidence in proceedings under this subpart. However, except as provided in paragraph (b) of this section, all relevant and probative evidence offered by a party shall be received in evidence.

(b) The presiding officer may deny the admission of evidence which is determined to be—

(1) Unduly repetitive; or